

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6356 of 1984

Date of decision: 9-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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BHARAT TEA CENTRE

Versus

STATE OF GUJARAT  
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Appearance:

MR BD KARIA for Petitioner

Ms. P. S. Parmar for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

#### ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, a partnership firm registered under the provisions of the Indian Partnership Act, has filed this special civil application challenging the order dated 24-3-1984 passed by the District Supply Officer and confirmed by the Deputy Secretary to the Government of Gujarat, Food and Civil Supplies Department, Sachivalaya, Gandhinagar, in Appeal No.158 of 1984 decided on 23rd October, 1984. It is not in dispute that the petitioner has started business to sell tea from March, 1984. On inspection conducted by the Chief Supply Inspector, Rajkot, at the business premises of the petitioner, on 24th March, 1984, it was found that the firm was carrying on business of sale of tea without holding registration certificate under the Gujarat Tea (Registration & Dealers') Orders, 1984. In the stock of the petitioner 1142 Kgs. of tea was found in excess of the permissible stock which should have been held by the petitioner at the business premises. The said stock was seized by the Inspecting Officer. Show cause notice was given to the petitioner by the District Supply Officer calling upon it to show cause why the tea stock should not be confiscated under the powers conferred under section 6-A of the Essential Commodities Act, 1955, and why action of lodging police complaint or court case should not be initiated under section 7 for breach of section 3 of the aforesaid Act. Reply to the show cause notice has been considered and the District Supply Officer under his order dated 8-5-1984 ordered confiscation of 427 kgs. of tea. Under the orders the quantity of confiscated tea has been shown to be 427 kgs. but there is no dispute between the parties that it is an error, and excess quantity of tea was only 142 kgs. Appeal has been filed against the said order by the petitioner. The Deputy Secretary to Government, Food and Civil Supplies Department, Gandhinagar, under order dated 23rd October, 1984 partly allowed the appeal, and the order of the District Supply Officer, Rajkot, was modified and 50% of the stock was ordered to be confiscated. Hence this special civil application.

2. Learned counsel for the petitioner contended that the petitioner had applied for registration on 12th March, 1984 and on 14th March, 1984 fees of Rs.40 was also paid. But upto the time of inspection, registration certificate was not issued. As the petitioner had already applied for registration, pending issue of

certificate by the competent authority, if stock of tea in excess of 1000 kg. is found, it cannot be said to be a case where the petitioner has made contravention of clause (3) of the order of 1984. It has next been contended that otherwise also under the provisions of the order of 1984, the petitioner has all the right to stock more than 1000 kgs. of tea during the period his application for grant of certificate of registration is not decided. Lastly the counsel for the petitioner contended that it is only a technical breach and as such the order of confiscation of 50% of the stock is arbitrary.

3. On the other hand, Ms. P.S. Parmar, the counsel for the respondents, contended that the petitioner has started his business of sale of tea on 12th March, 1984 and within a few days of their application stock of tea at the business premises was found to be in excess of 1000 kgs. It is true that the petitioner has submitted the register to the Mamlatdar on 14th March, 1984. But nothing was shown under the provisions of the order of 1984 to show that the petitioner could hold tea in excess of the permissible limit under the said Order. She has further contended that the petitioner had purchased 1256.100 kgs. of tea on 16-3-84 and 1585.900 kgs. on 22-3-84. So from these purchases of tea by the petitioner it is clearly borne out that he patently flouted the order of 1984. As per the provisions of the order of 1984 no person can trade in tea by holding stock in excess of 1000 kgs. without getting registration under the said Order. The petitioner was aware of the provisions of the Order. Still the petitioner has violated the said provisions and no indulgence deserves to be granted in favour of such persons. Ms. Parmar further submitted that the order of 1984 nowhere gives licence to the petitioner to continue to hold stock of tea in excess of 1 kg. pending grant of certificate of registration to him under the said order. His application was submitted on 12th March, 1984. Lastly the learned counsel for the respondents urged that the appellate authority has already shown indulgence to the petitioner and the confiscation of the stock ordered by the District Supply Officer has been reduced to 50%, and therefore no further indulgence is required.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. At the time of inspection of the shop by the Inspector of the Department, excess stock was found at the business premises of the petitioner. Not only this, the petitioner has purchased 1256.100 Kgs. of tea on 16th

March, 1984 and 1585.900 kgs. on 22nd March, 1984. So after 12th March, 1984 the petitioner has deliberately purchased quantity of tea more than what it was permissible to him to stock. I find sufficient merit in the contention of Ms. Parmar that the petitioner was well aware of the provisions of the Order of 1984, and in spite of that he stocked tea at his business premises in excess of the permissible quantity. So he has deliberately violated the provisions of the order of 1984. It is not a case of ignorance of the provisions of the border, or bona fide conduct on the part of the petitioner. Knowing well his own limitations for stocking tea, and when the application for certificate of registration was still pending, the petitioner has taken the law in his own hand and stock of tea was held in excess of the permissible quantity. The explanation which has been furnished by the petitioner that he has declared the stock to the Mamlatdar is hardly of any substance because violation of the provisions which has been made by him is not cured by this conduct of his.

5. The provisions of Essential Commodities Act, 1955 have been enacted by the Parliament with certain objects and purposes, namely, to control the supply of essential commodities, to avoid unhealthy competition as well as to have fair distribution and control of stock, marketing of the commodities etc., The Gujarat Tea Registration of Dealers Order, 1984 has been made under the 1955 Act. To regulate the sale, supply and distribution of tea, an essential commodity, to the people of the country, restriction has been put on the trader not to stock more than 1000 kgs of tea without having registration Certificate under the aforesaid order. The 1984 Order has been brought into force with effect from 5-1-1984. So after 5-1-1984 no one could have held stock of more than 1000 kg. of tea without certificate of registration under clause (3) of the 1984 Order. It is not the case of the petitioner that he was trading in tea earlier to 5-1-1984. Whatever protection was given pending grant of registration under clause(3) of the 1984 Order was for those dealers who were already doing business of sale of tea prior to 5-1-1984. No protection whatsoever has been given to the dealers who started the business of sale of tea after 5-1-1984 pending their application for grant of registration certificate under clause (1) of the Order 1984. The contention of the counsel for the petitioner that the petitioner was permitted to stock more than 1000 kgs. of tea during the pendency of his application for registration is untenable. I do not find any illegality in the order passed by the appellate authority. On the other hand I find that the appellate authority has shown

indulgence to the petitioner, though it was not required to be shown. The petitioner is not a law abiding trader. He is a person who patently flouted the provisions of the Order of 1984. Sympathies and equitable considerations are for those traders who are law abiding and are acting bona fide. Sympathies and equities are not meant for those traders who patently flout the law. It is not a case of technical breach of the order of 1984. It is a deliberate attempt on the part of the petitioner to flout the order of 1984.

6. The petitioner has filed this special civil application under Article 226/ 227 of the Constitution of India. If it is taken to be under Article 226 of the Constitution, how far it can be said to be justifiable for this court to extend indulgence to a person who patently flouted the law? Contrary to it, if any indulgence is granted to such a class of persons, then it will encourage other traders also to flout the law. Laws are being made to be complied with by the dealers and not for flouting the same. If this petition is taken to be under Article 227 of the Constitution, then too I do not find any justification to exercise the power in favour of the petitioner. The Essential Commodities Act, 1955 is a special legislation concerning the dealers in essential commodities. The Legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. This Court sitting under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Exercise of powers under Article 227 of the Constitution by this court must be restricted to cases of grave dereliction of duty and flagrant abuse of the fundamental principles of law and or justice where grave injustice would be done unless this Court interferes. As stated earlier it is a case where the appellate authority has extended indulgence for which otherwise the petitioner did not deserve.

7. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted earlier by this Court stands vacated. No order as to costs.

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